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HAROLD B. WILLEY, C

**SUPREME COURT OF THE UNITED STATES**

No. 563

October Term, 1953

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IRMA HOGAN,

Petitioner,

vs.

LEE J. RICKETTS, Executor of the Estate of ELIZABETH HENSCHEN, Deceased,

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## PETITION FOR REHEARING AND BRIEF IN SUPPORT

To the United States Supreme Court and the Justices;

The Petitioner in the above-entitled cause presents this Petition for a Rehearing of her Petition for a Writ of Certiorari, and, in support thereof respectfully shows:

That other substantial Federal grounds for Certiorari were available to this Petitioner although not previously presented, namely, that the Petitioner has been denied by the Court of Appeals the "due process of law" in the Federal Courts, guaranteed to her by the Fifth Amendment to the Constitution of the United States. That said Amendments constitutes a restriction upon the powers of the Federal Government, and same provides, "nor shall any person be deprived of life, liberty OR PROPERTY, without the due process of law."

That such Federal constitutional protection and guaranty of "due process of law" required a fair and full hearing and a consideration by the Court of Appeals, and a judgment in exact conformity and obedience to the law of the land, which right was not accorded to this Petitioner, but denied. And this even after it had been clearly and definitely shown in the Petition and Amended Petition for a

Rehearing in this case in the Court of Appeals, by unimpeachable later Ohio Supreme Court decisions, that the 1926 case of *Cleveland Trust Co.* v. *Scobie* (114 O.S. 241) had been reconsidered and modified by the said court after Judge Allen had left that bench, by its new decisions in 1935, 1937, 1941 and 1950, eliminating thereby the use of the four words which were fatal in the instant case, namely, "he has created in the second party by contract a joint interest in his right to the deposit 'EQUAL TO HIS OWN.'"

That under the Statutory laws of Ohio and the last decisions of the Supreme Court, the Petitioner on the death of her donor aunt, had an absolute right, title and interest as the Survivor named in the Joint and Survivorship Building Association Accounts, to the PROPERTY and funds in said accounts, according to the "Contract" between the donor and the Building Associations. We claim that said rights became vested on the death of the donor.

That in the instant case it is the substantive right, as declared by the laws of Ohio, which is to be enforced in the Federal Court under the "Rules of Decision Act."

That the parties and the Federal Courts must now search for and apply the entire body of such substantive law governing an identical action in the State Courts.

That it is the rule announced by "the highest Court of the State," to-wit, the Supreme Court of Ohio, which must be followed by the Federal Courts, as fully set forth in *Erie Railroad Company* v. *Tompkins* (year 1938) 304 U.S. 64. The term "laws" are now extended to include the principles of decisions of State Courts.

**LINCOLN MINES OPERATING CO. VS. HURON, 27 FED. SUP. 720**

> "The federal court is required to apply the law of the State whether the law has been declared by the State Legislature, or by the State's highest court in a decision."

## THIS COURT FURTHER HAS JURISDICTION ON GROUNDS OF DIVERSITY OF CITIZENSHIP

A reading of *Erie Railroad* v. *Tompkins* would indicate that the sole ground of jurisdiction of diverse citizenship would be sufficient to raise the substantial Federal Question in this case. In this particular class of cases, the Federal Court should apply the law of the State of Ohio which governs the law of said state regarding joint and survivorship Building Association Accounts.

From the foregoing it is obvious that where the substantive right sued upon is derived from the law of the State, it is the law of the State which must be investigated to maintain the suit in a Federal Court, and that the Federal Court must follow the state law on the subject.

## SUPREME COURT PRACTICE BY STERN AND GRESSMAN

"DIRECT CONFLICT OF DECISIONS BETWEEN A COURT OF APPEALS AND A HIGHEST STATE COURT ON FEDERAL QUESTIONS.

"Another valid reason for the granting of certiorari by the Supreme Court is the presence of a direct conflict between the decision of a court of appeals and that of the highest court of a state, where that conflict concerns federal questions. Such a conflict will warrant review of either of the conflicting decisions, since the Supreme Court is the final arbiter of matters of federal law decided by either federal or state courts. Hence a conflict between such courts concerning the construction and application of the federal Constitution, or the validity, construction or application of federal statutes or treaties, or any right, title, privilege or immunity thereunder, will support a petition for a writ of certiorari."

It should be apparent that there is here presented A CONFLICT BETWEEN THE SIXTH COURT OF APPEALS AND THE SUPREME COURT OF OHIO, WHICH HIGHEST COURT OF THE STATE HAS

ANNOUNCED THE PRESENT LAW OF OHIO APPLICABLE TO JOINT AND SURVIVORSHIP ACCOUNTS.

The very purpose of the Rules of Decision Act and *Erie Railroad* v. *Tompkins* has been wholly frustrated and ignored by the judgment of the Court of Appeals, which not only failed but refused to recognize that there is a conflict between it and the Ohio Supreme Court on the same subject.

WHEREFORE, upon the foregoing grounds, it is respectfully urged that this Petition for a Rehearing be granted and that the judgment of the Court of Appeals for the Sixth Circuit be upon further consideration reversed.

Respectfully submitted,

GEORGE S. HAWKE,
Counsel for Petitioner.

Dated April 15, 1954

Certificate of Counsel. I, George S. Hawke, counsel for the above named Petitioner do hereby certify that the foregoing Petition for a Rehearing of this cause is presented in good faith and not for delay, and that this petition is restricted to the grounds specified.

GEORGE S. HAWKE,
Counsel for Petitioner.